

QUESTIONS/COMMENTS IN GRASSLEY LETTER OF 2/9/11

Body of Letter

Page 1, Para 1: “ATF agents told my staff that the agency allowed the sale of assault rifles to known and suspected straw purchasers for an illegal trafficking ring near the southwest border.”

ATF has an open criminal investigation involving a large, illegal firearms trafficking organization associated with Mexican based drug traffickers. As part of the investigative process, ATF has identified numerous purchasers and other persons potentially and/or suspected of being engaged in the criminal activity. During the course of the investigation, non-prohibited individuals being investigated as suspected straw purchasers continued to periodically purchase firearms from federally licensed firearms dealers. Some of these purchases became known to ATF through reported multiple sales, information from licensed dealers, information from cooperating individuals, surveillances conducted by ATF, interdictions and/or gun traces by other US law enforcement agencies, and in some cases, gun recoveries and/or traces in Mexico.

Page 1, Para 2: “In that letter, the Department categorically denied that the ATF “knowingly allowed the sale of assault weapons to a straw purchaser...” The Department said that the ATF makes “every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.”

The omitted portion of the first statement by DOJ referenced above is “...who then transported them to Mexico – is false.” As noted by DOJ, ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico. Again, we have to note that all of these purchases involve non-prohibited persons following the federal firearms procedures. The fact that such persons may have made numerous purchases, including purchases of firearms identifiable as weapons of choice in Mexico or purchases involving multiple firearms, does not in itself establish a federal violation. Even if the individuals subsequently sold these firearms to another person, or if some of the firearms were recovered in crimes in the US or Mexico, additional evidence would be required to establish a violation. ATF used every available tool and every effort was made to interdict firearms in this case going south to Mexico. The number of seizures made by ATF and other US law enforcement officials reflect that.

ATF in Phoenix, prior to, during and after the GRIT operation that initiated in May 2010, conducted extensive surveillance on source FFL locations, suspect purchasers and other trafficking suspects. ATF detailed numerous agents from out-of-town and out-of-state to assist in surveillances during this case prior to the arrival of the GRIT participants, from approximately March 14 to May 3, 2010. These detailed agents worked exclusive surveillance for 7 weeks, 7 days a week, for nearly 4,000 hours of surveillance. In addition, the Phoenix Group VII personnel also conducted numerous surveillance operations prior to the arrival and after the departure of these detailees, including during the GRIT operations. ATF Phoenix developed and maintained a detailed surveillance assignment list. In addition to physical, mobile surveillance,

ATF utilized a variety of electronic surveillance methods, including but not limited to [ATF] [ATF]. Also, the Phoenix Police Department Air Wing was utilized on numerous occasions to conduct aerial surveillance. During all of these surveillance operations, at no time did ATF knowingly conduct surveillance of any person or vehicles in which firearms “walked” into Mexico. Also, referrals were made to other US law enforcement agencies operating along the border and in Mexico.

As should be noted, even with the detailees and the additional manpower derived from the GRIT operation, ATF Phoenix could not surveil every “suspected” residence, purchaser and dealer premises on a non-stop, 24/7 basis. This was not, and is not today, the only firearms trafficking case we are working in the Phoenix area. We utilized personnel and other tools as much as possible, but when a “suspected straw purchaser” goes into their home with firearms and nothing happens for days, we must make judgments as to how to best proceed with the investigation. In this case, we were dealing with in excess of [LES] “suspected straw” purchasers and other suspects. This ATF office has at least that many [LES] active cases. In addition, even if we were to approach a suspected straw purchaser, we have no ability to force the person to tell us where or to whom the guns may be going. If such interviews are conducted and lead to legally acceptable responses, we must continue our investigative efforts, despite having alerted the suspect to our efforts.

Page 1, Para 3 and Page 2, Para 1: “According to the whistleblowers, at least one gun dealer wanted to stop participating in sales like those to [ATF] sometime around October 2009. However, the ATF allegedly encouraged the dealer to continue selling to suspected traffickers and asked the dealer to forward information about the sales to the Bureau.”

See the two “releases” generated by the FFL [LES] (1/26/2011 and 2/1/2011) and USAO document (1/28/2011) of that event. These documents address the nature of such interactions with FFLs, specifically [LES] as to how ATF communicates with FFLs regarding their regulatory requirements, authority and independence in conducting firearms transactions, including their decision to proceed with or decline sales involving suspected straw purchasers, traffickers and prohibited persons, and their voluntary cooperation with ATF regarding suspicious purchasers.

It was noted that the Grassley letter references October 2009, which predates the purchases by [ATF]. Although the FFL and USAO documents reflect that [LES] had been voluntarily providing ATF with information [LES], it’s possible that the whistleblowers’ comments refer to another FFL. When asked, the Phoenix SAC, ASAC and RAC have all indicated that no scenarios as described in Grassley’s letter involving [LES] or other FFLs are known. Again, conversations between FFLs and ATF occur frequently, including discussions initiated by FFLs who voluntarily report information about potential straw purchasing/trafficking activity to ATF. In some occasions, FFLs may ask ATF whether they should proceed with or decline future sales to such persons. In all cases

known to us, as was indicated by ATF supervisors in Phoenix, ATF provides FFLs with guidance that appropriately outlines the role, responsibility and authority of FFLs as to the completion or declination of such transactions. We are unaware of any occasions in which ATF personnel have encouraged or coerced an FFL to complete apparently illegal firearms transactions or provide information or assistance to ATF not required by the GCA.

Page 2, Para 3: "...the indictment of [ATF] and others references approximately 769 firearms. Of those, the indictment refers to the recovery of only about 103 weapons. So where are the other approximately 666 weapons referenced in the indictment?"

In conjunction with the Fast and Furious investigation, a group of 46 individuals were entered into the Suspect Gun database. A total of 372 firearms (including 37 recovered in the Tohono O'odam Indian Reservation) in the database were recovered/seized in the US. The number of firearms recovered in Mexico was 195. In addition, through ATF surveillances and enforcement operations, another 230 firearms were recovered prior to being entered into the database. Therefore, 602 firearms were interdicted in the US, and 195 were recovered in Mexico, for a total of 797 firearms recovered.

Attachments

In reviewing the attached documents, which appear to be redacted law enforcement sensitive ATF internal investigative reports and emails, the following was noted.

Attachment 1: This multiple sale summary report is dated 11/25/2009. It relates to a purchase made on 11/24/2009. At that time, [ATF] was not yet identified by ATF as a "suspect" in the Suspect Gun/Person Database.

Attachment 2: This redacted ATF Management Log, partially illegible, appears to document that ATF coordinated and deconflicted this investigation with other federal OCDETF agencies, including DEA and ICE, in furtherance of the overall US law enforcement efforts along the southwest border. ATF Phoenix VII is an ATF-led OCDETF Strike Force group that is collocated with other federal agencies that lead OCDETF strike force groups. It also notes the contact with the FFL on 12/17/2009.

Attachment 3: This Multiple Sale summary report relates to a purchase by [ATF] on 1/9/2010. Again, it is noted that at this time, [ATF] is not yet identified as a "suspect" in the ATF Suspect Gun/Person Database. In addition, the NTC comment remains "purchaser may be associated with 9 other trace(s)/multiple sale(s)."

Attachment 4: The redacted email, dated 1/13/2010, reflects the entry of 42 subjects for this investigation into the Suspect Person Database. [ATF] appears on the chart, with a total of 2 multiple sales reports involving a total of 8 firearms, as well as 2 suspect gun reports, for a total

of 10 suspect firearms. It should be noted that based on this chart, as of 1/13/2010, [ATF] had -0- firearms identifiable with him that had been traced by ATF.

Attachment 5: This 1/14/2010 suspect gun summary report is essentially a duplicate of the information in the 1/11/10 multiple sale report (Attachment 3).

Attachment 6: This 1/19/2010 suspect gun summary report relates to the 1/16/2010 purchase of three WASR-10s by [ATF]. This information was made known to ATF by the FFL on 1/19/2010.

Attachment 7: These suspect gun summary reports relate to two Barrett .50 purchases by [ATF] on June 4 and June 15, 2010. These reports were generated because ATF Phoenix caused [ATF] and his firearm purchases to be entered into the Suspect Gun/Person Database.

Attachment 8: This redacted ATF Significant Information Report dated 12/16/2010 reports the arrest of [ATF]. As reported, two firearms purchased by [ATF] on 1/16/2010 were recovered on 12/15/2010 at the scene of a shooting incident in which a CBP officer was killed. Following the incident, ATF agents located and interviewed Avila. [LES]
[LES] ATF arrested [ATF] and filed a criminal complaint for federal firearms charges. Per USAO document (1/28/2011), the charges related to [ATF] providing false address information on F4473 on 6/15/2010.

Attachment 9: These are two firearms trace summary reports dated 12/16/2010 for the two WASR-10 firearms recovered at the CBP shooting scene on 12/15/2010. These reports indicate the traces were pending completion.